THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
VILAS V. AFZULPURKAR

A.S.Nos.1304, 1305, 1306, 1568, 1764, 1908, 2288, 2289, 2643, and 2644 of 1999; 2090 of 1998; 2396 & 2747 of 2001 and 1706 of 2000
and
LAASMPNos.1742 of 2006, 1006 & 1007 of 2009
in A.S.No.1304 of 1999
LAASMPNos.1751 of 2006, 1419, 1828 & 1829 of 2009
in A.S.No.1305 of 1999
LAASMPNos.2078 of 2006, 1004 & 1005 of 2009
in A.S.No.1306 of 1999
LAASMPNos.1741 of 2006, 1008 & 1009 of 2009
in A.S.No.2288 of 1999
LAASMPNos.1737 of 2006, 1011 & 1012 of 2009
in A.S.No.2289 of 1999
LAASMPNos.1573,1574 of 2006,1002,1003 & 1421 of 2009 in A.S.No.2090 of 1998
LAASMPNos.1962 of 2006, 1420,1034 & 1035 of 2009
in A.S.No.2396 of 2001
LAASMPNos.1928, 1572 of 2006, 1797, 1798 of 2009
in A.S.No.1706 of 2000

Date of Judgment: 15-07-2011

CT in A.S.No.1304 of 1999

Between:

.Smt. T.Usharani and another

…Appellants

and

1. The LAO & RDO, Peddapalli, Karimnagar District and others

…Respondents

The Court made the following common Judgment:

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
VILAS V. AFZULPURKAR

A.S.Nos.1304, 1305, 1306, 1568, 1764, 1908, 2288, 2289, 2643, and 2644 of 1999;2090 of 1998; 2396 & 2747 of 2001 and 1706 of 2000
and
LAASMPNos.1742 of 2006, 1006 & 1007 of 2009
in A.S.No.1304 of 1999
LAASMPNos.1751 of 2006, 1419, 1828 & 1829 of 2009
in A.S.No.1305 of 1999
LAASMPNos.2078 of 2006, 1004 & 1005 of 2009
in A.S.No.1306 of 1999
LAASMPNos.1741 of 2006, 1008 & 1009 of 2009
in A.S.No.2288 of 1999
LAASMPNos.1737 of 2006, 1011 & 1012 of 2009
in A.S.No.2289 of 1999
LAASMPNos.1573,1574 of 2006,1002,1003 & 1421 of 2009 in A.S.No.2090 of 1998
LAASMPNos.1962 of 2006, 1420,1034 & 1035 of 2009
in A.S.No.2396 of 2001
LAASMPNos.1928, 1572 of 2006, 1797, 1798 of 2009
in A.S.No.1706 of 2000

Common Judgment: (Per Honourable Sri Justice ***A.Gopal Reddy***)

1. All these batch of appeals raises similar question of law, viz., "*whether award of compensation for land and separately for sub-soil mineral rights in principle is justified or not*". Hence, they are heard and disposed of together by this common judgment.

2. The facts in nutshell which give rise to filing and necessary for disposal of the appeals may, briefly, be stated as under:

3. An extent of Ac.22.05 gts. and Ac.70.26 gts. of land covered by O.P.Nos.241 and 242 of 1987 respectively of Jallaram village were acquired by issuing notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in the A.P. Gazette dated 25-01-1985. The Land Acquisition Officer (LAO) passed award dated 05-07-1985 and 12-08-1985 respectively fixing the market value of the acquired land at Rs.9,000/- per acre along with additional benefits. Dissatisfied with the quantum of compensation the claimants sought for reference. On reference being made, the civil court fixed the market value of the acquired land in the above O.Ps. at Rs.27,000/- per acre (Rs.20,000 towards land value + Rs.7,000 towards sub-soil mineral rights) as against the claim of Rs.75,000/- per acre. Seeking further enhancement of compensation the claimants filed A.S.Nos.1304, 1305 of 1999; whereas questioning the enhancement of compensation the beneficiary Company filed A.S.Nos.1568 and 1764 of 1999 respectively. Pending appeal—A.S.No.1304 of 1999, LAASMP Nos.1742 of 2006 was filed seeking permission to enhance the value of the appeal from Rs.5,31,600/- to Rs.32,81,600/-; LAASMP No.1006 of 2009 was filed to further enhance the value of the appeal to Rs.8,83,33,975/- and LAASMP No.1007 of 2009 was filed to receive the additional evidence. Pending appeal—A.S.No.1305 of 1999, LAASMP No.1751 of 2006 was filed to enhance the value of the appeal from Rs.18,87,600/- to Rs.1,98,87,600/- and LAASMP No.1828 of 2006 was filed to further enhance the value of the appeal to Rs.29,20,72,175/- and LAASMP Nos.1419 & 1829 of 2009 are filed to receive additional evidence.

4. An extent of Ac.39.02 gts. covered by O.P.No.261 of 1987 of Jallaram village was acquired through G.O.Rt.No.209/EE S&T (Pr.I), dated 13-09-1983 by publishing notification under Section 4(1) of the Act in the A.P. Gazette dated

14-02-1984. The LAO fixed the market value of the acquired land at Rs.9,600/- per acre. On reference being made at the instance of the claimants, the civil court fixed the market value of the acquired land at Rs.35,800/- per acre (Rs.28,800/- towards land value and Rs.7,000/- towards sub-soil mineral rights). Seeking further enhancement of compensation at Rs.75,000/- per acre the claimants filed A.S.No.1306 of 1999. Pending appeal, the claimants filed LAASMP No.2078 of 2006 seeking permission to enhance the value of the appeal from Rs.15,30,076/- to Rs.1,89,30,076/-; LAASMP No.1004 of 2009 was filed to further enhance the value of the appeal to Rs.28,30,48,310/- and LAASMP No.1005 of 2009 was filed to receive additional evidence; whereas questioning the enhancement made in O.P.No.261 of 1987 the beneficiary Company filed A.S.No.1908 of 1999.

5. An extent of Ac.16.31 gts. and Ac.2.36 gts. (totaling Ac.19.27 gts.) covered by O.P.Nos.76 and 89 of 1996 in Sy.No.502 were acquired through notification under Section 4(1) of the Act dated 06-07-1993 in which the LAO passed award dated 31-07-1995 fixing the market value of the acquired land at Rs.12,500/- per acre. On reference being made the civil court by common order fixed the market value of the acquired land at Rs.40,600/- per acre (Rs.33,600/- towards land value and Rs.7,000/- towards sub-soil mineral rights). Seeking further enhancement of compensation at Rs.1,40,000/- per acre and in addition Rs.60/- per metric tonne for sub-soil mineral of coal the claimants filed A.S.Nos.2288 and 2289 of 1999 respectively; whereas questioning the enhancement of compensation the beneficiary company filed A.S.No.2644 and 2643 of 1999. Pending appeal—AS.No.2288 of 1999, LAASMP Nos.1741 of 2006 was filed seeking permission to enhance the value of the appeal from Rs.16,77,500/- to

9,93,90,394/-; LAASMP No.1008 of 2009 was filed to further enhance the value of the appeal to Rs.13,13,66,025/- and LAASMP No. 1009 of 2009 was filed to receive additional evidence. Pending A.S.No.2289 of 1999, LAASMP No.1737 of 2006 was filed seeking permission to enhance the value of the appeal from 2,90,000/- to Rs.1,70,91,820/-; LAASMPNo.1011 of 2009 was filed to further enhance the value of the appeal to Rs.2,34,05,900/- and LAASMP No.1012 of 2009 was filed to receive additional evidence.

6. An extent of 43.15 gs. of dry land of Uppalakesaram village was acquired through notification dated 23-05-1986.
The LAO in Award No.4/1988 dated 21-05-1988 fixed the market value of the acquired land at Rs.2,800/- per acre. On reference being made in O.P.No.99 of 1988, the civil court fixed the market value of the acquired land at Rs.24,000/- per acre and the compensation for sub-soil mineral rights at Rs.15,000/- per acre totaling 39,000/- per acre. Seeking further enhancement of compensation at Rs.75,000/- per acre claimants 5 and 6 filed A.S.No.2396 of 2001 in which they filed LAASMP No.1034 of 2009 seeking permission to enhance the value of the appeal from Rs.4,68,000/- to Rs.9,34,45,350/- and LAASMP No.1035 of 2009 to receive the additional evidence. Questioning the enhancement of compensation the beneficiary company filed A.S.No.2747 of 2001.

7. An extent of Ac.143.28 gts. of patta land was acquired through notification dated 17-02-1989. The LAO in Award No.2 of 1990 dated 16-08-1990 fixed the market value of the acquired land at Rs.9,000/- per acre. On reference being made, the civil court fixed the market value of the acquired land at Rs.19,000/- per acre apart from awarding 12% compensation under Section 23(1-A) of the Act and

interest on the compensation fixed from the date of taking possession i.e.

01-07-1917. Seeking further enhancement of compensation at Rs.1,25,000/- per acre claimant No.1 filed A.S.No.1706 of 2000. Questioning the enhancement of compensation and awarding additional compensation and interest from the date of taking possession the beneficiary company filed A.S.No.111 of 2002. Pending appeal—A.S.No.1706 of 2000, LAASMP No.1572 of 2006 was filed to enhance the value of the appeal from Rs.10,12,500/- to Rs.1,50,12,500/-; LAASMP No.1797 of 2009 was filed to further enhance the value of the appeal to Rs.2,48,43,875/-; LAASMP Nos.1928 of 2006 and 1798 of 2009 are filed to receive the additional evidence.

8. An extent of Ac.15.20 gts. of land was acquired through notification under Section 4(1) of the Act published in A.P.Gazette dated 18-05-1986 in which an extent of Ac.2.00 in Sy.No.506 was taken advance possession on 05-01-1970. The LAO fixed the market value of the acquired land at Rs.5,000/- per acre. On reference being made in O.P.No.110 of 1988 the civil court fixed the market value of the acquired land at Rs.16,000/- per acre apart from all statutory benefits including additional market value and interest from the date of taking advance possession. Seeking further enhancement of compensation at Rs.34,000/- per acre the claimants filed A.S.No.2090 of 1998. Questioning the enhancement of compensation the beneficiary Company filed A.S.No.1484 of 1992, which was dismissed on 06-10-1998. Pending A.S.No.2090 of 1998, LAASMP No.1002 of 2009 was filed to enhance the value of the appeal from Rs.6,92,500/- to Rs.11,54,40,850/-; LAASMP No.1574 of 2006 was filed to receive

additional grounds. LAASMP Nos.1573 of 2006, 1003 and 1421 of 2009 are filed to receive additional evidence.

9. Sri K.V.Satyanarayana, learned counsel for the appellants/claimants in A.S.Nos.1304, 1305, 2288, 2289 of 1999 and A.S.No.2601 of 2001 contended that the Land Acquisition (Mines) Act, 1885 (for brevity "Mines Act") is made applicable to Telangana Area by the Land Acquisition (Mines) A.P. Extention Amendment Act, 1965 (for short Act 5 of 1965). Section 2 of the Mines Act is a saving clause and the right to mines and mineral shall not be affected except provided under Mines Act. Section 3 provides for declaration. The mines of coal, ironstone; slate or other minerals lying under the land or any particular portion of the land are not needed. Under sub-section (3) of Section 3 unless such declaration as contemplated under Section 3(1) is made, the mine shall not vest in the Government though the land is vested with the Government on acquisition. Since Mines Act and Land Acquisition Act are prior Acts, the cannon of construction of Statutes reiterated with some modifications in Section 8 of General Clauses Act cannot be made applicable.

In support of the same, reliance is placed on the following judgments.

1. ***NATIONAL SEWING THREAD CO. LTD. CHIDAMABARAM v. JAMES CHADWICK AND BROS LTD.***[1]
2. ***PRAVESH CHANDRA v. NARINDR SINGH***[2]

In the absence of a notification issued as contemplated under Section 3 of Mines Act, though declaration is made under Section 6 of the Act, the mineral shall not vest with the Government on acquiring the land. Section 63 of the Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli (for short "Revenue Act") does not divest the ownership of mines once Central Act i.e., Mines Act is extended to the entire State of Andhra Pradesh by Act 5/1965 except the procedure as per the

Mines Act. In reinforcement of submissions reliance is placed on the following judgments.

1. ***GREAT WESTERN RAILWAY COMPANY v. CARPALLA UNITED CHINA CLAY COMPANY LIMITED***[3]
2. ***EDEN v. NORTH-EASTERN RAILWAY COMPANY***[4]
3. ***SECY. OF STATE v. LODNA COLLIERY CO.LTD.***[5]

He fairly conceded that this court in ***SINGARENI COLLIERIES COMPANY LTD.*** v. ***NOOKALA LINGAIAH***[6] and Supreme Court in ***UNION OF INDIA*** v ***PRAMOD GUPTA***[7] though held land owner is not entitled to compensation for mineral but the effect of Mines Act and its applicability has not been considered. The evidence of R.Ws.2 and 3 does not reflect how much coal preserved in the land acquired as per Ex.A21, which is an estimation of coal reserve. Once the reference court found that the claimants are entitled to compensation for sub-soil mineral on principle, the finding of the reference court about entitlement of compensation for sub-soil mineral is correct which needs no interference.

Even under Section 63 of the Revenue Act extraction of mines without permission is only prohibited. Therefore, with permission only one can extract the mines. When the land is of peculiar in character compensation has to be assessed basing on mineral deposits. The evidence of P.W.2, which has not been contradicted, shows deposit of coal and Ex.A21 should be taken as basis for fixation of compensation. Exs.A1 and A2 have to be taken as comparable sales for fixation of market value. In view of the same, claimants are entitled to seek permission for enhancement of value of appeal, as they are not aware of the value of mineral deposit in the land. Therefore, they are justified in seeking enhancement by enhancing value of the appeal by placing

reliance on the following judgments.

1. ***CHANDRASEKHAR v. ADDITIONAL SPECIAL LAND ACQUISITION OFFICER***[8] and
2. ***UNION OF INDIA*** v ***PRAMOD GUPTA*** (7 supra)

10. Sri J.Prabhakar, learned counsel for the appellants in A.S.No.1706 of 2000 contends that claimants 1 to 3 claim compensation at Rs.50,000/- per acre whereas claimants 9 and 10 claimed Rs.2,500/- per gunta which works out to Rs.1 lakh per acre when the purpose of acquisition is defilling.

11. Sri D.Prakash Reddy, learned senior counsel appearing for the appellants in A.S.No.1306 of 1999 contends that under Ex.A4—sale deed Ac.3.3/4 gts. of land was sold at Rs.10,000/- which works out Rs.1,06,000/- per acre. To prove the said document P.W.7, vendor has been examined whereas LAO himself calculated at Rs.12,000/- per acre and discarded the same. The claimants are owning Ac.0.05 gts. Ac.0.06 gts. maximum one acre, which is evident from award at page 39, and the same was also taken into consideration by the reference court in fixing the market value. Under Ex.A1 Ac.0.04 gts. of land was sold at Rs.80,000/- per acre. Vendee was examined as P.W.2; whereas vendor under Ex.A2 was examined as P.W.2 where Ac.0.05 gts. of land was sold at Rs.10,000/- on 25-02-1982 which works out to Rs.80,000/- per acre. Therefore, deduction does not arise, as all the claimants are owning Ac.0.05 gts. Ac.0.06 gts. upto one acre. Therefore, the claimants are entitled to atleast Rs.80,000/- per acre but they are claiming Rs.75,000/- per acre in the appeal. The same can be fixed taking the potentiality of the land.

12. Sri C.V.Mohan Reddy, learned senior counsel appearing for the beneficiary company, on the other hand, contends that under

Section 24 of the Revenue Act all lands together with all rights pertaining thereto are the properties of the Government except those belonging to the persons or class legally capable of holding property and to the extent so far as their rights are established. As per Section 63 of the Revenue Act, right to all mines vests in the Government and no person shall excavate anything from any mine without permission.

If any subsisting rights are established, claimants are not entitled to claim rights over the minerals. When the acquisition is not under the Mines Act, declaration as contemplated under the said Act does not arise. No attempt was made by the claimants compelling the Collector to make declaration under Section 3 of Mines Act, so it is not open for them to contend unless the declaration is made by the Government they are entitled to compensation. Even somebody has a right, it is not possible for small landholder to extract mineral in profitable manner as held by this court in ***SPECIAL TAHSILDAR, LAND ACQUISITION, YERRAGUNTLA v. K.REDDY***[9]. No statutory provisions were brought to the notice of the court in the above case. Therefore, reference court is not justified in awarding separate compensation for sub-soil rights. In support of the same he relied upon the following judgments.

1. ***SINGARENI COLLIERIES COMPANY LTD.*** v. ***NOOKALA LINGAIAH*** (6 supra)
2. ***STATE OF ORISSA*** v. ***UNION OF INDIA***[10]
3. ***UNION OF INDIA*** v ***PRAMOD GUPTA*** (7 supra)

The reference court is also not justified in awarding additional market value under Section 23(1-A) of the Act and also interest on the compensation from the date of taking possession in view of law declared by the Supreme Court in ***R.L.JAIN*** v. ***DDA***[11]. Once Ex.A1 cannot form basis reasonable deduction has to be made when small extents of land is taken as comparable sale. When lands in

O.P.Nos.241, 242 and 261 of 1987 of Jallaram village are acquired, the LAO relied upon Ex.A3—sale deed of Maredupaka village, which cannot form basis for fixation of market value by the civil court. Therefore, fixation of the market value separately for land and mineral rights is unjustified and not in accordance with law and the same is liable to be set aside.

13. In the light of the rival submissions, the points that emerge for consideration in this batch of appeals are:

> 1. When the lands are acquired under the provisions of Land Acquisition Act, by non-issuance of declaration as contemplated under Section 3 of the Mines Act the mineral in the land will not vest either to the Government or to the Company for whose benefits lands are acquired, and the land owner is entitled to separate compensation for the mineral or not.
> 2. What is the true market value of the compensation for which the claimants are entitled to?
> 3. Whether the claimants are entitled to amend the value of the appeal and can seek higher compensation in the appeals?
> 4. Whether the reference court is justified in awarding additional market value and also interest on the compensation from the date of taking possession?

14. Before we consider the rival submissions, a short resume of statutory provisions relied on and governs the acquisition/fixation of market value etc., have to be taken note of. They are:

15. The word '*Land*' has been defined under Section 2(1-b) of the Revenue Act, which reads as under:

> 'land' includes all kinds of benefits pertaining to land or things attached to the earth, or permanently fastened to things attached to the earth and also includes shares in,

or charges on, the revenue or rent which are or may be levied on villages, or other defined areas.

16. Section 24 of the Revenue Act specifies that all lands are the property of the Government, which reads thus:

> "All public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes, and flowing water and all lands, wherever situated, together with all rights appertaining thereto are the property of the Government excepting:
>
> (a) those belonging to persons or class legally capable of holding property and to the extent so far as their such rights are established;
>
> (b) those in respect of which any other order under any law may have been given. It shall be lawful for the Collector or other officer appointed by the Government for this purpose subject to rules sanctioned by the Government and contained in notification and the order of the Board of Revenue, to dispose of them in his discretion; but the right of way or other right legally vesting in any person or the public shall subsist."

17. As per Section 63, right to all mines vests in the Government. It reads as under:

> "Right to all mines vests in Government: Right to all mineral products vests in the Government and no person shall excavate anything from any mine without permission. But this section shall have no effect on subsisting rights."

18. The expression "land" has been defined in Section 3-A of the Act. It reads as under:

> "Land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".

19. Section 4 of the Act reads as under:

> Publication of preliminary notification and powers of officers thereupon:
>
> (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose 3 (2) 2. Inserted, by the Land Acquisition (Amendment) Act, 1984.[or for a company], a notification to that effect shall be published in the Official Gazette 3 (2) 2. Inserted, by the Land Acquisition (Amendment) Act, 1984.[and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality 3 (2) 2. Inserted, by the Land Acquisition (Amendment) Act, 1984.(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].
>
> (2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,-
>
> to enter upon and survey and take levels of any land in such locality;
>
> to dig or bore into the sub-soil;
>
> to do all other acts necessary to ascertain whether the land is adapted for such purpose……"

20. Section 6 of the Act deals with declaration when the land is required for a public purpose:

> (1) Subject to the provisions of Part. VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A , sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to

such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A , sub-section (2).

X x x x x.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1: x x x x

Explanation 2: Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of the public revenues. ……’

21. The object of enacting the Mines Act as per the Statement of objects and reasons is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 (Now Land Acquisition Act, 1894). Act XXII of 1863, which has been replaced by the Land Acquisition Act, 1870 contained specific provisions i.e., Sections 51 and 52 for cases in which mines and minerals lay under land taken up under that Act. Since the said provisions i.e., Sections 51 and 52 have not been re-enacted in the Land Acquisition Act, 1870, it necessitated to enact Land Acquisition (Mines) Act, 1885. It has been extended to State of Andhra Pradesh by Act 5 of 1965.

22. Section 2 of the Mines Act is a saving clause, which reads as under:

2. Saving for mineral rights of the Government:-

> Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

23. The object of amendment of Section 3 of the Mines Act as per the Bill introduced required the Government to determine before it issued its declaration under Section 6 of the Act, whether the land should be acquired simply under the Act, that is to say, including the minerals or whether the special provisions i.e., Section 3 of the Mines Act should be put in force with a view to excluding the minerals from the acquisition. Therefore, it is the discretion of the Government to exclude the minerals from the acquisition at any time upto the stage if it turns out that their acquisition is not essential to the undertaking and that either the owners are unwilling to part with them or the Government or the local authority or the company is unwilling to pay their full value.

24. Section 3 of the Mines Act deals with declaration.
It reads as under:

> "3:Declaration that mines are not needed:-
>
> (1) When the appropriate Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, ironstone; slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.
>
> (2) When a statement as aforesaid has not been inserted

in the declaration made in respect of any land under S.6 of the Land Acquisition Act, 1870 , and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may-

(a) to (c) x x xx

(3) If any such statement is inserted in the declaration, award or reference, or publish as aforesaid, the mines or coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act."

25. We shall now briefly refer to the cases which are cited by the learned counsels for the appellants and respondents as well.

26. In ***NATIONAL SEWING THREAD CO. LTD. CHIDAMABARAM***'s case (1 supra) the questions that fell for consideration before the Supreme Court were (1) whether the order of the learned single Judge of the High Court allowing appeal under Trade Marks Act is maintainable under Cl.15 of the Letters Patent of the Bombay High Court; and (2) whether the single Judge of the Bombay High Court was right in interfering with the discretion exercised by the Registrar in refusing registration of the appellants' mark under the Trade Marks Act. The Supreme Court while interpreting Cl.15 of the Letters Patent (Bombay) held as under:

"…..The canon of construction of statutes enunciated in S. 38, Interpretation Act and reiterated with some modifications in S. 8, General Clauses Act. is one of general application where statutes or Acts have to be construed and there is no reasonable ground for holding that that rule of construction should not be applied in construing the charters of the different High Courts. These charters were granted under statutory powers

> and are subject to the legislative power of the Indian Legislature. Assuming however but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for holding that the principles of construction enunciated in those provisions have no application for construing these charters. For the reasons given above we hold that the High Court was perfectly justified in overruling the preliminary objection and in holding that an appeal was competent from the judgment of Shah J. under Cl. 15 of the Letters Patent." (para 9)

27. In ***PRAVESH CHANDRA'***s case (2 supra) the facts are on acquisition of land under the Land Acquisition Act for the purposes of location of the factory for the manufacture of ammonium sulphate and allied industries and for the establishment of Bihar Grid Power Station and incidental purposes, the sub-lessee of the land who obtained lease of sub-soil rights from the proprietor instituted a suit for damages stating that he was in possession of the sub-soil rights under sub-lease and is entitled to remove the sand from the bed of river Damodar for valuable consideration and he defendants wrongfully removed huge quantity of sand from he bed of river Damodar. On dismissal of the suit by the Subordinate Judge holding that the company for whose benefit land is acquired had the right to the sand of the bed of river Damodar and plaintiff is not entitled to any damages. On further appeal to Patna High Court, the Division Bench of Patna High Court after referring to the relevant notification issued under Section 6 of the Land Acquisition Act, wherein it was specifically stated "mines of coal, iron, stone, slate or other minerals lying under the land any particular portion of the land except only such parts of the mines and minerals as it may be necessary to dig or carry away or use in the construction of

the work for the purpose of which the land is being acquired are not needed", and after referring to the observation of the Williams, J. in ***CHURCH V INCLOSURE COMMISSIONERS*** (1862) 11 CB (NS) 664) that "minerals in the ordinary sense" meant "minerals which could be worked in the ordinary way underground leaving the surface or crust unaffected" held that the sand is manifestly not mineral lying under the land and the sand in this case is a sand lying on the surface of the bed of the river Damodar and therefore, sand did not fall within the terms of the clause of reservation under the notification and accordingly dismissed the appeal upholding the decision of the Subordinate Judge.

28. In ***GREAT WESTERN RAILWAY COMPANY's*** case (3 supra) the House of Lords held that all mines and minerals not expressly purchased by a railway company that purchases lands within or under which minerals may be found, may, in case the company has not agreed to pay compensation, be worked by the owner, lessee, or occupier thereof, complying with the statutory provisions applicable to the case, even though such working may interfere with the use of the railway and absolutely destroy the surface.

29. In ***EDEN***s case (4 supra), the facts are that lessees of coal mines, part of which lie under the line of North-Eastern Railway gave a notice to the railway company under Section 78 of the Railway Clauses Consolidation Act, 1845 stating that they are desirous of working the coal lying under the part of the line. The railway company required the lessees to leave certain portions of the unworked coal under their line for its support, expressing their willingness to pay such compensation as the law required. In that way Railway Company became bound to pay, in accordance with the Act of Parliament,

"compensation for such mines or any part thereof," whatever that means. What it does mean is the real question. Considering the said question it was held the leasehold owner is entitled to compensation for true value of the situ.

30. In the case of ***LODNA COLLIERY CO. LTD***. (5 supra) the Patna High Court was dealing with the rights of the lessees entitled to wok the mines and compensation on restriction of the area. After considering the object of the Mines Act that the persons who are interested shall be compensated when they entitled to work the mines has been restricted held that the effect of Sections 5 and 6 of the Mines Act is merely to provide that the restriction shall not be imposed unless the Government Shall be willing to compensate all persons interested. The obligation to compensate follows upon the imposition of the restriction and is not dependent on an announcement by the Government that they are willing to pay such compensation.
In short if they care to restrict they must also compensate. Moreover, it hardly lies in the mouth of the Government to claim protection from the obligation to compensate by alleging the irregularity of their own conduct.

31. In the case of ***NOOKALA LINGAIAH*** (6 supra) this Court though held that the sub-soil mineral vests with the Government and the owner of the land is not entitled to claim any rights over the sub-soil mineral situated in his land, enhanced the compensation keeping in view of the potentialities of the land.

32. Against the judgment rendered by this court in ***NOOKALA LINGAIAH*** (6 supra), Singareni Collieries Company Ltd., filed petition for Special Leave to Appeal (Civil) No.4151/2003 before the Supreme Court and it is pending.

33. In ***PRAMOD GUPTA's*** case (7 supra) after considering the facts which would be relevant for determining the market value of the acquired land, which contains mineral, and the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 observed as under:

> "Ownership" in respect of an immovable property would mean a bundle of rights. Only a proprietor of a surface land will have the sub-soil right. But such rights may also have certain limitations. Tenure holder or sub-tenure holder and/or an agricultural tenant created for carrying out agricultural operation per se would not become the owner of the sub-soil right. The right granted in favour of such sub-tenure holder, tenure holder or the agricultural tenant would, thus, depend upon the concerned statute and/ or the relevant covenants contained in the grant." (para-46)

After extensively dealing with the rights of the owners, the Supreme Court further held as under:

> "We are not suggesting, as at present advised that mineral rights or rights over minerals can in no situation remain in the hands of the private individuals. There may be cases where having regard to the statutory provisions, the mineral rights may continue to remain in the hands of the private owners. But while examining the question of computing the quantum of compensation, the courts are required to bear in mind the extent of such rights and in particular the statutory provisions which prohibit carrying out mining operations without obtaining appropriate mining lease, prospective licence or permits. The courts must also bear in mind that even in a case where owners are entitled to the minerals having regard to the provisions contained in the Punjab Minor Mineral Rules 1934, the amount of compensation would be much less and with

the acquisition of land the right to use the minerals would come to an end. Compensation for such minerals may not be computed on the basis of the profits earned by a mining lessee having a valid mining lease therefor. Furthermore, a person having a right to use mines and minerals for his personal use and not for sale will still have to obtain an appropriate permit in terms of the statutory provisions. It may not be out of place to notice that right to receive royalty is a mineral right as has been held by Wanchoo, J. in HINGIR RAMPUR COAL CO., LTD., V. STATE OF ORISSA (1961 (2) SCR 537) AND INDIA CEMENT LTD., AND OTHERS V. STATE OF TAMIL NADU AND OTHERS (1990) 1 SCC 12)" (para 74)

"The amount of compensation therefore, in view of the statutory provisions will depend upon several factors, as noticed hereinbefore. In any event, the profit earned by illegal mining i.e. carrying on mining operations contrary to the 1957 Act or the rules framed thereunder would by no means be a safe criteria for determining the amount of compensation." (para 77)

The Supreme Court in the above judgment while dealing with the amendment of reference and additional evidence held as under:

"We do not agree. The pleadings before the trial court are the basis for adduction of evidence either before the trial court or before the appellate court. By amending the memo of appeal the original pleadings cannot be amended. The claimants respondents made their claim before the Reference Court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 merely provides for applicability of the provisions of the Code of Civil Procedure including the one containing Order 6, Rule 17 thereof……." (para 134)

"Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an

application for amendment of the pleadings……..” (para 135)

“……An observation made to the effect that an application under Order 6, Rule 17 would be maintainable having regard to Section 53 of the Act, with utmost respect, does not constitute a binding precedent……” (para 136)

34. In the case of ***CHANDRASEKHAR*** (8 supra) the Supreme Court held as under:

“From the observations as quoted herein earlier, we conclude that the decision of the Constitution Bench in Buta Singh ((1995) 5 SCC 283) has not reversed the decision in Bhag Singh ((1985) 3 SCC 737) and the law laid down in Scheduled Caste Coop. ((1991) 1 SCC 174) is materially different from the law established by this court in Bhag Singh (supra) since both the decisions dealt with different matters and moreover the Scheduled Caste Coop. (supra) decision has in fact recognized the validity of the law laid down in Bhag Singh (supra). Therefore, we are of the opinion that following the judgment of Bhag Singh (supra) in the present case shall not be in conflict with the opinion of the Constitution Bench decision in the case of Buta Singh (supra). Thus, in our opinion, it is settled that the High Court should not have deprived the appellants of their rightful claim on the technical ground of want of requisite Court Fees and an opportunity should have been afforded to them for payment of the deficit Court Fee. This position is also supported by the decision of this court in a recent case viz. Bhimasha v. Special Land Acquisition Officer [(2008) 10 SCC 797] wherein it has been held that the High Court should have, after taking note of the facts of the case and the market value determined by it, awarded the higher compensation subject to the payment of the balance court fee.” (para 13)

35. In ***K.REDDY***'s case (9 supra) this court held that in determining the market value of the land, the Court is entitled to go into the special adaptability as one of the components for determination of the market value of the land but it cannot award the market value separately for the sub-soil rights. Thus, Anantha Bat's case (AIR 1972 Mysore 313) is an authority for the later proposition.

36. In ***STATE OF MYSORE v. SWAMY SATYANAND SARASWATI***[12], the question that fell for consideration before the Supreme Court was whether the landholder is entitled to sub-soil rights by virtue of the pattas granted in favour of his predecessor-in-interest by Nawab Salar Jung III of Hyderabad and as a consequence thereof became entitled to compensation claimed by him for acquisition of a large lack of land containing a hillock of granite which was acquired under the Hyderabad Land Acquisition Act. The Land Acquisition Officer while passing the award disallowed the claim for sub-soil rights and the reference court confirmed the same. On appeal the High Court took a view that the granite in respect of which compensation was claimed in the case was not a mineral and that being so, it is not possible to hold that the minerals and mineral products in the hillock vested in the Government under Section 63 of the Hyderabad Land Revenue Act. On further appeal, the Supreme Court after considering the Firmans held the Nizam is not conferred the right of minerals in the land or to quarry for granite therein. Therefore, in the absence of grant of sub-soil right implication does not arise.

37. In the light of the law, referred to above, we shall now examine the claim of the petitioners.

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Point No.1:

38. In all the cases the General Manager, Singareni Collieries Company sent a requisition for acquisition of land in Jellaram and other villages for the purpose of providing ventilation of TDK 6-A Incline. On the basis of said requisition lands were acquired through notification under Section 4(1) of the Act in which award was passed by the LAO fixing the market value as detailed in the earlier paragraphs and reference court enhanced the compensation for the land and also awarded separate compensation for sub-soil mineral right.

It was emphatically contended that unless declaration as contemplated under Section 3 of the Mines Act is made while issuing declaration under Section 6 of the L.A. Act mineral in the land will not vest either to the Government or to the Company for whose benefit the lands were acquired. All the lands are governed by the provisions of the Revenue Act. As per Section 63 of the Revenue Act right to all mines vests in the Government and no person shall excavate anything from any mine without permission from the Government, but the said section will not have any effect on subsisting rights i.e. if any rights are conferred on the owner of the land for excavation of the mineral, either in the Mineral Development Act or lease hold rights conferred for extraction of such mineral.

39. Section 3 of the Mines Act deals with declaration whenever mines are not needed. When the Collector is of the opinion that provisions of Mines Act have to be applied to the land acquired, a statement to the said effect has to be made under Section 6 of the Act specifying the mines of coal lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it

may be necessary are needed will be acquired. If any such declaration is made that mineral deposit in the land is not required, he may abstain from tendering compensation under Section 11 of the Act in respect of mines of coal, and arrive the market value by not considering the potentiality of the land. If the declaration made in that regard that mineral is not required by the Government or by the requisitioning Company under Section 6 that the mines of coal is not required by the Government or the acquisition company the same will not vest in the Government or the Company for whose benefit the land is acquired. Thus, it is obvious the purpose of acquisition assumes importance. Where the declaration is made only for acquiring the land for the purpose it is needed but not for extracting mineral deposit, the land owner can still claim right to the mineral as compensation is not arrived basing on potentiality of land use as it is not form part of declaration. Since the very purpose of acquisition is for open cast mining and ancillary purpose, such a declaration need not be made by the Collector excluding the mineral. In the absence of such declaration made, the land holder cannot claim compensation separately for sub-soil mineral rights, but can seek determination of compensation on the basis of potentiality of the land.

40. In cases 2 to 5 cited by the learned counsel for the appellants either lessee or the person in whose favour rights for extract of mineral are conferred initiated proceedings either for claiming damages or seeking compensation for deprivation of lease hold mineral rights. Therefore, they are not relevant to the issue involved and misplaced to the facts of the present case.

41. As per the definition of '*land*' under the Revenue Act or under the Land Acquisition Act includes all kinds of benefits pertaining to land or things attached to the earth, or permanently fastened to

things attached to the earth etc.

The very fact that acquisition of the land is for the purpose of providing ventilation to GDK 6A Incline i.e. where the mining operations are undertaken in the underground to provide ventilation to such underground minings adjacent lands were acquired. It is not either for laying railway track or roads or buildings to be constructed on the land without extracting the mine excavation that declaration as contemplated under Section 6 of the Act has to be declared and can the Government deprive the owner of the value of the mineral.

42. This Court in ***NOOKALA LINGAIAH***'s case (6 supra) categorically held sub-soil mineral vests with the Government and the owner of the land is not entitled to claim any rights over the sub-soil mineral situated on the site except claiming compensation.

43. The Supreme Court in ***PRAMOD GUPTA***'s case (7 supra) after extensively dealing with sub-soil right held the amount of compensation depends upon several factors i.e. royalty receivable by the lessee for the mineral etc. the existing right in the owner when the Revenue Act came into force.

The Supreme Court categorically held that even in a case where owner is entitled to mineral having regard to the provisions contained in the Punjab Minor Mineral Rules, 1934, with the acquisition of land the right to use the mineral would come to an end. Compensation for such minerals may not be computed on the basis of the profits earned by a mining lessee having a valid mining lease therefor. Therefore, it is fallacy to contend that on acquisition of the land, land owner still have a right to extract the mineral from the land and entitled to compensation for the mineral rights in proportion to the deposit of the

mineral.

Point No.1 is accordingly answered.

Point No.2

44. The Supreme Court in ***CHIMANLAL HARGOVINDDAS v. SPECIAL LAND ACQUISITION OFFICER***[13] sensitized the reference court on the issue whether the award rendered by the LAO can be treated as a judgment under appeal and the methodology for the valuation of the compensation for the land acquired enumerated the factors which must be etched on the mental screen of the judges to determine the market value while deciding the reference as well as the appeal arising against the award passed by the LAO. They are as under:

> "(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.
>
> (2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.
>
> (3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.
>
> (4) The claimant is in the position of a plaintiff who has

to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(*i*) proximity from time angle,

(*ii*) proximity from situation angle.

(11) Having identified the instances which provide the

index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	***Minus factors***
1. smallness of size	1. largeness of area
2. proximity to a road	2. situation in the interior at a distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth

4. nearness to developed area	4. lower level requiring the depressed portion to be filled up
5. regular shape	5. remoteness from developed locality
6. level vis-à-vis land under acquisition	6. some special disadvantageous factor which would deter a purchaser
7. special value for an owner of an adjoining property to whom it may have some very special advantage	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 eq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction byway of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must

place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

45. Keeping the above principles in mind, we shall now proceed to analyze the evidence adduced by the parties for enhancement of compensation claimed.

46. In O.P.No.261 of 1987, which is the subject matter of A.S.No.1306 of 1999, an extent of Ac.39.02 gts. of Jellaram village was acquired by issuing 4(1) notification in the gazette dated 14-02-1984. After passing the award when the matter is referred to the civil court, the son of claimant No.1 was examined as P.W.1 who deposed that an extent of Ac.4.16 gts. of land belongs to claimant No.1 and others was acquired for the purpose of open cast mining and possession was taken on
22-05-1984. At the time of acquisition the market value of the acquired land was Rs.3,000/- to 4,000/- per gunta which works out to Rs.1,20,000/- to 1,60,000/- per acre. Under Ex.A1—certified copy of the sale deed, dated 01-02-1982 one Valluri Satyanarayana sold Ac.0.04 gts. of land in Sy.No.84 situated at Allur village for a consideration of Rs.8,000/-. Under Ex.A2 one Daravath Tarachand has sold an extent of Ac.0.05 gts. of land in Allur village to Nerella Shankaraiah for a consideration of Rs.10,000/- which works out to Rs.80,000/- per acre. Similarly under Ex.A3, one Syed Tajuddin sold Ac.0.10 gts. of land situated at Allur village to Bairi Rajesham—P.W.6 for a consideration of Rs.10,000/- which works out to Rs.40,000/- per acre. Under Ex.A4, one Namsani Komuraiah has sold Ac.0.3 ¾ gts. of land in Sy.No.382/1 of Jallaram village for a consideration of Rs.10,000/- which works out to Rs.1,00,000/- per acre. Under Ex.A5

one Bade Rajaiah—P.W.9 has sold Ac.o.09 gts. of land of Allur village to Dadi Mallaiah for a consideration of Rs.6,000/- which comes to Rs.60,000/- per acre. Under Ex.A6, one Syed Aleemuddin—P.W.5 has sold Ac.0.05 gts. of land of Allur village for a consideration of Rs.5,000/- which comes to Rs.50,000/- per acre. Under Ex.A7 one Syed Kareemuddin sold an extent of Ac.0.10 gts. for Rs.10,000/- which comes to 40,000/- per acre.

47. To prove Exs.A1, A2 and A3, vendees—P.Ws.2, 8 and 6 were examined. To prove Exs.A4, A5 and A6, vendors—P.W.7, 9 and 5 were examined. P.W.3, Surveyor working in Mandal Revenue Office, Peddapalli deposed that he visited the Maredapaka, Jellaram, Upparla Kesaram and Allur villages and prepared map and further stated Maredapaka, Jellaram, Allur and Uppalakasarm villagers are situated adjacent to each other; and nearby the acquired land there is a big colony known as
8-Incline Colony. P.W.4, who worked as Geologist in Mineral Exploration Corporation, was examined to prove the profitability of production of coal by underground mines in SCCL area during 1989-90. Exs.A12 and A13 are the geological maps of Ramagundam coal belt and Ex.A11 is the cadastral map of Upparla Kesaram and Jellaram villages prepared by him.

48. R.W.1, Deputy Manager in Corporate Planning Department in SCCL and previously worked as Administrative Officer deposed that draft notification was published on
14-02-1984; he visited the acquired survey numbers and the acquired land is nearer to Sy.No.162. The LAO discarded Ex.A4—sale deed on the ground that during the relevant period the market value of the acquired land was around Rs.5,000/- per acre. The SCCL Company

doing mining operation from 1962 acquired the lands in surrounding villages and various villages; as such the villagers are not cultivating their lands. The Deputy Tahsildar in the office of Revenue Divisional Officer was examined R.W.2. Apart from the same, the claimants also filed certified copy of the order and decree passed in O.P.No.275 of 1985 which covers the land in Upparla Kesaram village where the LAO fixed the market rate at Rs.9,600/- per acre and the civil court enhanced to Rs.30,000/- per acre. In the said award the LAO adopted sale survey number 162 of Jallaram village and after giving due escalation fixed the market value at Rs.9,600/-.

49. Sri D.Prakash Reddy, learned senior counsel taken us through the sale deed—Ex.A4 and the award passed by the LAO where he miscalculated in arriving the market value. It was contended that the claimants are having 5 to 6 gts. of land, they are small farmers and only few claimants are having one acre.

In the award for discarding Ex.A4—sale deed at Sl.No.46 it was stated that the sale which reported to be meant for house site purpose and extent involved is small. The calculation of LAO in arriving the market value at Rs.12,000/- per acre is also not correct. Under Ex.A4 sale an extent of 3 ¾ gts. of land was sold at Rs.10,000/- which works out to Rs.1,06,000/-. Even after giving necessary deductions from the same the claimants are entitled to more compensation than awarded by the LAO.

50. Admittedly, the lands are acquired under different notifications from the year 1984 to 1993 as detailed in the earlier paragraphs of the judgment. In O.P.Nos.76 and 89 of 1996, which is the subject matter of A.S.Nos.2288 and 2289 of 1999. The vendor of Ex.A1—sale deed, dated 16-05-1992 was examined as P.W.1 wherein

he stated that he sold 2 gts. 22 yards of Jallaram village for a consideration of Rs.590/- which works out Rs.1,08,167/- per acre. The vendor of Ex.A2, dated 20-08-1990 was examined as P.W.7 who stated that he sold Ac.0.08 gts. situated at Jallaram village to the Arya Vysya Sangham for a consideration of Rs.67,760/- which comes to Rs.3,38,800- per acre. P.W.8, who is the vendor of sale deed Ex.A13, dated 11-03-1991, deposed that he sold Ac.0.20 gts. of land at Rs.1,81,500/- which comes to Rs.3,63,000/-. P.W.6 the vendor of Ex.A14—sale deed, dated 08-06-1991 stated that he sold Ac.0.15 gts. of land situated at Jallaram village for a consideration of Rs.45,375/- which comes to Rs.1,21,000/- per acre. The vendor of Ex.A15—sale deed, dated 18-03-1991 examined as P.W.3, who stated that he sold 5 gts. 35 yards of Jallaram village for a consideration of Rs.48,000/- which comes to Rs.3,84,000/- per acre. All the above sale deeds pertain to separate villages which cannot form basis for fixation of market value. P.W.5 vendee under Ex.A16 stated that he purchased 14 gts. of land in Jallaram for a consideration of Rs.40,900/- which works out to Rs.3,39,547/- per acre. Similarly, in O.P.No.18 of 1989 under Exs.A5 and A6 the lands of Jallaram were acquired through 4(1) notification dated 18-07-1985 and 28-10-1986 and the LAO fixed the market value at Rs.5,500/- per acre. When the claimants sought for reference under Section 18 of the Act, the civil court fixed the market value of the acquired land at Rs.16,000/- per acre. Aggrieved by the same SCCL filed A.S.No.1246 of 1992 to reduce the compensation whereas the claimants have filed A.S.No.1606 of 1998 seeking further enhancement. This Court by common order in A.S.No.1263/1990, 1184/1991, 1246 & 1484 of 1992, 2827/1996 and 1606 of 1998 held since the evidence adduced in all the cases is common and similar, we re-determine the compensation for the lands covered by notification

of the year 1985 at Rs.23,000/- per acre and in respect of the lands acquired in the year 1986 at Rs.23,000/- and the lands in the year 1987 at Rs.24,000/- per acre and in respect of the lands acquired in the year 1989 at Rs.28,000/- and rejected the plea of special compensation for sub-soil mineral rights.

The reference court recorded a finding in O.P.Nos.76 and 89 of 1996 that the claimants were declined the land by SCCL, who took possession in 1963 itself.

51. Recently the Supreme Court in C.A.Nos.5710, 5711 & 5712 of 2005 and 6228—6233 of 2010 where vast extent 970.09 acres of land situated at Lingapur village, Ramagundam Mandal, Karimangar District was acquired for open cast mining at Medipally by issuing notification dated 04-08-1989 in which award was passed on 27-03-1991 fixing the market value at Rs.12,200/- per acre and it was enhanced to Rs.40,000/- per acre by the reference court the land owners preferred appeals for further enhancement and Company filed appeals questioning the enhancement. The High Court while dismissing the appeals filed by the Company partly allowed the appeals filed by the land owners relying upon the sale transactions A2, to A4, A14 and A15 where small extents of land were acquired fixed the market value of the acquired land at Rs.55,000/- per acre with all statutory benefits. When appeal is filed the Supreme Court fixed the market value of the acquired land at Rs.65,000/- per acre with all statutory benefits.

52. It is well settled that highest market value shown in the sale deeds relied on by Government should be preferred to the rest unless there are strong circumstances justifying a different course. (see ***RANEE OF VUYYUR v. COLLECTOR OF MADRAS*** (1969 (1) An.W.R.45 (SC)).

Therefore, in Jallaram village highest market value under Ex.A4—sale deed works out to Rs.1,06,000/- per acre. The method adopted in fixing the market value on the basis of small extents of land covered by sale deeds in A.S.Nos.2228, 2230 and 2229 of 2004 and Cross Appeals Nos.3123, 2317 and 2316 of 2004 by the High Court dated 27-12-2004 has been approved by the Supreme Court in C.A.Nos.6228—6233 dated 02-08-2008. Exs.A4 and A5 sale deeds are independent transactions; therefore the same can be safely taken into consideration for fixing the market value. After giving 50% deduction towards developmental charges from the consideration under Ex.A4 it will comes to Rs.50,000/- per acre. Even as per Ex.A5 market value comes to Rs.60,000/- per acre. Therefore, the market value of the acquired land covered under O.P.Nos.261 and 262 of 1987 can safely be fixed at Rs.55,000/- per acre. The notification in O.P.Nos.261 and 262 of 1987 was issued on 14-02-1984, which will be taken as base for fixing the compensation for the lands acquired subsequent to the said date by reasonably enhancing the compensation towards escalation.

53. It is now fairly well settled that after the base year awarding 10% per annum for every subsequent year is neither excess nor unreasonable. (See ***SPECIAL LAND ACQUISITION OFFICER v. MOHD. HANIF SAHIB BAWA SAHIB*** (2002) 3 SCC 688). Keeping in view of the same, we fix the compensation for the lands acquired subsequent to the said date.

54. In O.P.No.241 and 242 of 1987 notification was issued one year thereafter i.e. on 25-01-1985. In view of the same, the market value of the acquired land covered by O.P.Nos.241 and 242 of 1987 is fixed at Rs.60,000/- per acre. The lands covered by O.P.Nos.76 and 89

of 1996 were acquired 8 years thereafter i.e. on 06-07-1993; therefore, after giving reasonable escalation of 10% for the time gap between the notification of the lands covered in O.P.Nos.261 and 262 of 1987, the market value of the acquired lands in O.P.No.76 and 89 of 1996 total extent of Ac.19.27 is fixed at Rs.1,00,000/- (Rs.55,000 + 45,000) per acre. Whereas for the lands covered in O.P.No.99 of 1988 notification was issued on 23-05-1986; therefore, the market value of the acquired land covered in O.P.No.99 of 1988 is fixed at Rs.66,000/- per acre. For the lands covered in O.P.No.37 of 1992 notification was issued on 17-02-1989; therefore, the market value is fixed at Rs.70,000/- per acre. For the lands covered in O.P.No.110 of 1986 notification was issued on

18-05-1986; therefore, the market value is fixed at Rs.66,000/- per acre.

Point No.2 is answered accordingly.

Point No.3:

55. The Supreme Court in ***PRAMOD GUPTA***'s case (7 supra) while dealing with the amendment of reference and additional evidence held that the pleading before the trial court is basis for adduction of evidence either before the trial court or before the appellate court. By amending the memo of appeal the original pleadings cannot be amended. The claimants/ respondents made their claim before the reference court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 of the Act merely provides for applicability of the provisions of the CPC including the one containing Order6 Rule 17 thereof. Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or

disallowing an application for amendment of the pleadings.

In O.P.No.261 of 1987 the claimants claimed compensation at Rs.1,20,000/- per acre, but restricted their claim to Rs.75,000/- per acre, while preferring the appeal—A.S.No.1306 of 1999 on 25-06-1999. They filed LAASMP No. 2078 of 2006 seeking permission to enhance the value of the appeal; LAASMP No.1004 of 2009 seeking permission to further enhance the value of the appeal and LAASMP No. 1005 of 2009 for receiving additional evidence. In A.S.No.1304 of 1999, LAASMP Nos.1742 of 2006 was filed seeking permission to enhance the value of the appeal from Rs.5,31,600/- to Rs.32,81,600/-; LAASMP No.1006 of 2009 was filed to further enhance the value of the appeal to Rs.8,83,33,975/- and LAASMP No.1007 of 2009 was filed to receive the additional evidence. In A.S.No.1305 of 1999, LAASMP Nos.1751 of 2006 was filed to enhance the value of the appeal from Rs.18,87,600/- to Rs.1,98,87,600/- and LAASMP No.1828 of 2006 was filed to further enhance the value of the appeal to Rs.29,20,72,175/- and LAASMP Nos.1419 & 1829 of 2009 are filed to receive additional evidence. In AS.No.2288 of 1999, LAASMP Nos.1741 of 2006 was filed seeking permission to enhance the value of the appeal from Rs.16,77,500/- to Rs.9,93,90,394/- ; LAASMP No.1008 of 2009 was filed to further enhance the value of the appeal to Rs.13,13,66,025/- and LAASMP No. 1009 of 2009 was filed to receive additional evidence. In A.S.No.2289 of 1999, LAASMP No.1737 of 2006 was filed seeking permission to enhance the value of the appeal from 2,90,000/- to Rs.1,70,91,820/-; LAASMPNo.1011 of 2009 was filed to further enhance the value of the appeal to Rs.2,34,05,900/- and LAASMP No.1012 of 2009 was filed to receive additional evidence. A.S.No.2090 of 1998, LAASMP No.1002 of 2009 was filed to enhance the value of the appeal from Rs.6,92,500/- to Rs.11,54,40,850/-;

LAASMP No.1574 of 2006 was filed to receive additional grounds. LAASMP Nos.1573 of 2006, 1003 and 1421 of 2009 are filed to receive additional evidence. In A.S.No.2396 of 2001, LAASMP No.1034 of 2009 was filed seeking permission to enhance the value of the appeal from Rs.4,68,000/- to Rs.9,34,45,350/- and LAASMP No.1035 of 2009 to receive the additional evidence. In A.S.No.1706 of 2000, LAASMP No.1572 of 2006 was filed to enhance the value of the appeal from Rs.10,12,500/- to Rs.1,50,12,500/-; LAASMP No.1797 of 2009 was filed to further enhance the value of the appeal to Rs.2,48,43,875/-; LAASMP Nos.1928 of 2006 and 1798 of 2009 are filed to receive the additional evidence.

56. We do not see any merit in the above MPs without seeking any condonation of delay by assigning sufficient reasons the claimants are not entitled to enhance the value of the appeal. Therefore, all the LAASMPs are dismissed.

Point No.3 is accordingly answered.

Point No.4:

57. Award of additional market value under Section 23 (1A) of the Act and also interest on the compensation is whether from the date of taking possession is no longer res integra.

58. The Supreme Court in ***SIDDAPPA VASAPPA KURI v. SPECIAL LAND ACQUISITION OFFICER***[14] held that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 (1) notification. The terminal point is either the date of the award or the date of taking possession, whichever is earlier. If the possession is taken prior to the publication of 4(1) notification, the terminal point is not available and only available

terminal is the date of award.

59. In ***R.L.JAIN***'s case (11 supra) the Supreme Court considered the issue whether payment of interest is applicable where possession is taken prior to issuance of notification under Section 4(1) of the Act and held both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will be *de hors* the Act. The provisions of Sections 11(1) and 23 (1A) show in unmistakable terms that publication of notification under Section 4(1) is the sine qua non for any proceedings under the Act. The words "*so taking possession*" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is *de hors* the provisions of the Act and approved the view taken by the Supreme Court in **SPECIAL TAHSILDAR (LA), PWD SCHEMES** v **M.A. JABBAR** ((1995) 2 SCC 142 = AIR 1995 SC 762) wherein it was held that the claimants are entitled to interest on the compensation amount from the date of issuance of notification, if possession is taken earlier, but not from the date of taking possession.

60. In view of the same, claimants are not entitled to additional market value under Section 23(1-A) of the Act and interest on the enhanced compensation amount from the date of taking possession but they are entitled to the same only from the date of issuance of 4(1)

notification.

Point No.4 is accordingly answered.

61. In the result, the appeals are partly allowed to the extent indicated above. There shall be no order as to costs.

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A.GOPAL REDDY, J.

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VILAS V. AFZULPURKAR,J.

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Murthy/Kmr

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[1] AIR 1953 SC 357
[2] AIR 1962 PATNA 14
[3] 1909 APPEAL CASES 1983
[4] 1907 APPEAL CASES 400
[5] AIR 1936 PATNA 513
[6] 2003 (1) ALD 424
[7] (2005) 12 SCC 1
[8] 2009 (III) CLT 97 (SC)
[9] AIR 1990 AP 124
[10] (2001) 1 SCC 429
[11] (2004) 4 SCC 79
[12] 1971(2) SCC 88
[13] AIR 1988 SC 1652 = (1988) 3 SCC 751
[14] (2002) 1 SCC 142